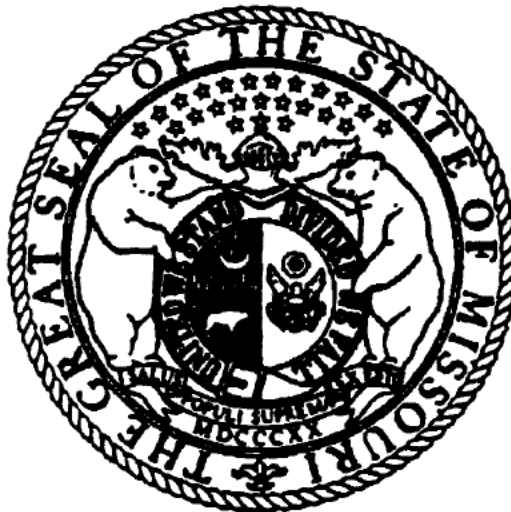


**REPORT
OF
THE INTERIM COMMITTEE
ON
ELDERLY ABUSE AND NEGLECT**



Missouri House of Representatives

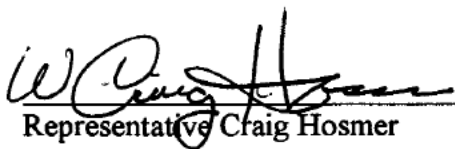
December, 1999

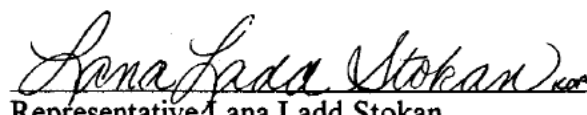
December 14, 1999

The Honorable Steve Gaw, Speaker
Missouri House of Representatives
State Capitol
Jefferson City, MO 65101

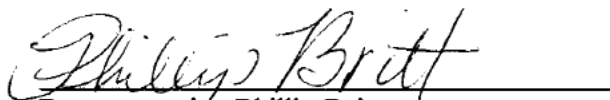
Dear Mr. Speaker:

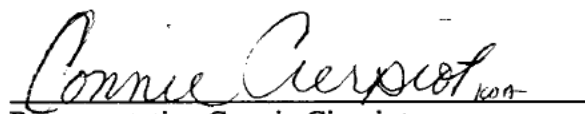
The Interim Committee on Elderly Abuse and Neglect has met, taken testimony, deliberated, and concluded its study on issues of abuse and neglect which confront the growing elderly population in Missouri. The undersigned members of the Committee are pleased to submit the attached report.

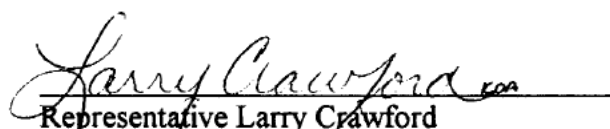

Representative Craig Hosmer
Co-Chair

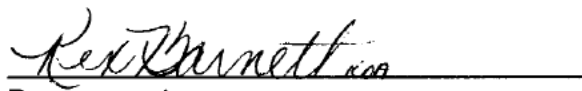

Representative Lana Ladd Stokan
Co-Chair

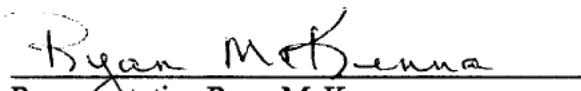

Representative Michael Gibbons

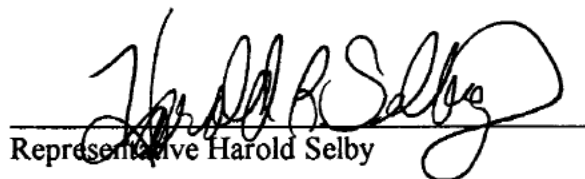

Representative Phillip Britt


Representative Connie Cierpiot


Representative Larry Crawford


Representative Rex Barnett


Representative Ryan McKenna


Representative Harold Selby

**REPORT OF THE INTERIM COMMITTEE
ON ELDERLY ABUSE AND NEGLECT**

Missouri House of Representatives

December, 1999

Prepared by

Katharine Barondeau,
House Research Staff

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REPORT OF THE INTERIM COMMITTEE ON ELDERLY ABUSE AND NEGLECT

I. Overview

The state's population is projected to be 5,505,509 in the year 2000, with 770,798 or 14% aged 65 or older. In 2025, the state's population is projected to be 6,182,539, with 1,221,875 or nearly 20% aged 65 or older.¹ For the 1998 fiscal year, the Division of Aging reports 13,386 complaints of abuse and neglect, within the home and community, of elderly persons and adults with disabilities under age 60. Of those complaints, 56.4% resulted in a finding that the investigator had reason to believe the complaint was valid. Recognizing that the increasing elderly population in Missouri and the reports of elderly abuse and neglect create challenges for the investigation and prosecution of such cases in the state, Speaker of the House Steve Gaw appointed the Interim Committee on Elderly Abuse and Neglect. Speaker Gaw appointed Representative Craig Hosmer, Representative Lana Ladd Stokan, Representative Phillip Britt, Representative Ryan McKenna, Representative Harold Selby, Representative Rex Barnett, Representative Connie Cierpiot, Representative Larry Crawford, and Representative Michael Gibbons, with Representative Hosmer and Representative Stokan selected as the Committee's Co-Chairs. The Committee was charged with studying the reporting, investigation, and prosecution of elderly abuse and neglect cases to determine whether statutory changes are necessary.

The Committee held several public hearings to solicit testimony concerning a variety of

¹The Office of Administration provided these projections.

issues related to elderly abuse and neglect. Hearings were held in the following locations:

September 16, 1999	Jefferson City
October 4, 1999	St. Louis
October 29, 1999	Kansas City
October 18, 1999	Springfield
November 19, 1999	Jefferson City

Based on the testimony provided by various care givers, law enforcement professionals, prosecutors, consumers, family members, advocates, long-term care providers, state agency officials, and health care professionals, the Committee approved 18 recommendations to improve the reporting, investigation, and prosecution of elderly abuse and neglect cases in Missouri.

Following is a brief discussion of those recommendations.

II. Findings and Recommendations

Recommendation 1: Chapter on Protection of the Elderly

Currently, statutes relating to the protection of the elderly are codified in several chapters of the Revised Statutes of Missouri. For example, statutes establishing various types of crimes relating to elderly abuse and neglect are located within Chapter 198 (Convalescent, Nursing and Boarding Homes), Chapter 565 (Offenses Against the Person), and Chapter 660 (Department of Social Services: Protective Services for Adults). Several witnesses indicated that it was difficult to find all the statutes relating to the protection of the elderly. Health care professionals reported that several statutes with mandatory reporting requirements existed in various chapters. Law enforcement professionals and prosecutors explained that locating the various statutes under

which an alleged perpetrator could be charged was difficult. Therefore, the Committee recommends legislation directing the revisor of statutes to codify all statutes relating to protection of the elderly within one chapter of the Revised Statutes of Missouri.

Recommendation 2: Revise Statutes Regarding Mandatory Reporting

The Committee heard testimony about inconsistencies within several statutes requiring various professionals and care givers to report suspected cases of abuse and neglect. Witnesses indicated that Sections 660.300, RSMo, 565.188, RSMo, and 198.070, RSMo, require different professionals and care givers to report abuse and neglect, but that each section inexplicably omits a few mandatory reporters that the other sections include. In addition, the sections use somewhat different language to explain what should be reported. Witnesses explained that these differences contribute to confusion concerning reporting requirements. Some witnesses reported that they believed that some mandatory reporters were unaware of the statutory requirements. The Committee finds that the awareness and enforcement of the mandatory reporting requirements would be enhanced if the statutes were revised to be consistent. The Committee recommends revising the statutes to apply to the same categories of care givers and professionals. The Committee also recommends clarifying the language concerning when a mandatory reporter is required to report so that the statutory sections are consistent and the requirements are less confusing. The requirements concerning mandatory reporting should be codified in the new chapter on protection of the elderly.

Recommendation 3: Division of Aging Referrals to Law Enforcement

Several witnesses expressed concern that staff from the Division of Aging did not make timely referrals to law enforcement of suspected cases of elder abuse and neglect. Witnesses from various law enforcement and prosecutors' offices stated that they often received reports of elder abuse and neglect too late to adequately investigate and prosecute. Frequently, witnesses cannot be located and victims' conditions have worsened so that they are not effective witnesses when law enforcement members receive the report. The Committee recommends, within the new chapter on protection of the elderly, legislation requiring Division of Aging staff to immediately refer to law enforcement any report that on its face constitutes a crime.

In addition, the practice of anonymous hotline calls should be addressed, so that callers are encouraged to identify themselves and that such identification be held confidential. The Division of Aging should actively prosecute persons who knowingly provide false information to the hotline. The Division should also review its rules and regulations to determine if modifications are necessary to facilitate prosecution of individuals who knowingly report false information to the hotline.

Recommendation 4: Enhanced Prosecutorial and Investigative Procedures

The Committee heard much testimony concerning problems with investigating and prosecuting cases of elder abuse and neglect. Because of that testimony, the Committee solicited recommendations to improve the process from the Office of the Missouri Attorney General. The Attorney General recommended: revising Section 191.910, RSMo, to eliminate the 60-day waiting period between referral from the Attorney General to the local prosecutor and re-referral

from the local prosecutor to the Attorney General for prosecution, expanding the definition of abuse within Section 191.900, RSMo, allowing the Attorney General to apply for investigative subpoenas and search warrants in connection with investigations of abuse cases, and allowing an abuse victim's statement made near the time of the incident to be admitted into evidence when the court believes the statement to be reliable and the victim is unavailable to testify due to the victim's physical or mental condition. The Department of Social Services also recommended allowing this evidentiary hearsay provision for elderly or disabled victims. The Committee endorses the recommendations submitted by the Attorney General.

Recommendation 5: Law Enforcement and Division of Aging Training

Many witnesses testified that the effectiveness of professionals in investigating elder abuse and neglect varies greatly across the state. Witnesses also testified that timely investigation was crucial to prosecution because of the deteriorating health conditions of many of the elderly victims. Law enforcement witnesses expressed interest in receiving training with Division of Aging staff to more effectively coordinate and investigate cases of elder abuse and neglect. The Committee received testimony from the Springfield Police Department and endorses the efforts of its senior crimes team, which investigates crimes perpetrated against individuals aged 65 or older. The Committee finds that additional training would enhance investigative efforts. The Committee recommends directing the Department of Public Safety to collaborate with members of law enforcement and the Division of Aging to establish a training program on investigating elder abuse and neglect. The Committee also recommends requiring the Division of Aging to collaborate with members of law enforcement and the Department of Public Safety to develop a program to more

effectively train the Division of Aging's staff in investigating abuse and neglect of the elderly including methods to preserve evidence, more effectively determine what constitutes a crime, and enhance prosecution.

Recommendation 6: Cross-Reference Elder Abuse and Neglect Criminal Provisions

Many witnesses testified about the need for better prosecution of elderly abuse and neglect cases. The Committee notes that sections codified within Chapters 198 and 660, RSMo, include criminal provisions relating to elderly abuse and neglect and finds that, to eliminate confusion, those provisions should be repeated or cross-referenced within Chapter 565, RSMo (Offenses Against the Person). The Committee recommends directing the revisor of statutes to cross-reference or repeat within Chapter 565, RSMo or other appropriate criminal chapters, the criminal provisions of Chapters 198 and 660, RSMo, relating to financial exploitation, abuse, and neglect of the elderly.

Recommendation 7: Penalty for Notifying Nursing Homes of Inspections

Several employees of long-term care facilities and family members of residents testified that facility administrators know in advance the dates when Division of Aging staff will inspect the facility. These witnesses explained that, because the facilities are warned of the inspection, the Division of Aging is unable to detect conditions contributing to abuse and neglect of elderly residents that occur when the inspectors are not at the facility. Staff from the Division of Aging testified that the perception of facilities being warned may exist because some facilities can occasionally predict when the inspection will occur due to the Division's inspection cycle. The

staff also testified that facilities in small towns may be warned by town residents who observe the state's inspectors arriving in the town. The Committee notes that legislation approved last year (CCS/HS/SB 326 (1999)) requires the Division of Aging to conduct its inspections without prior notification and at such times which do not permit facilities to predict when inspections will occur. The act also requires the Division of Aging to annually evaluate the inspection process to ensure it is meeting those requirements. While the Committee recognizes that it is too early to assess the effectiveness of CCS/HS/SB 326's inspection requirements, witnesses' statements about the facilities receiving warnings of inspections is so prevalent that additional recommendations are necessary. To emphasize the importance of unannounced inspections, the Committee recommends legislation requiring the Division of Aging to dismiss any employee found to have notified any long-term care facility's employee or employee of an organization affiliated with the facility of an inspection prior to the inspectors' arrival at the facility.

Recommendation 8: Immediate Investigation of Reports Involving Imminent Harm

Many witnesses testified that Division of Aging investigations of elder abuse and neglect failed to substantiate abuse in some instances because staff did not interview all of the appropriate witnesses in a timely manner. The Committee finds that the requirement in Section 198.070, RSMo, for the Division of Aging to initiate an investigation within 24 hours of receiving a report of abuse or neglect is inadequate in cases involving imminent harm. The Committee recommends legislation requiring the Division of Aging to initiate an investigation immediately when a situation involving imminent harm is reported.

Recommendation 9: Better Access to Results of Inspections

Many witnesses expressed concern that long-term care facilities were allowed to commit violations, correct them, and continue to repeat and correct the violations. Family members of residents and advocates testified that these patterns caused residents to be at risk for abuse and neglect. Many suggested that facilities licensed by the Division of Aging be required to post at the facility the results of their inspections for the previous two years. Some suggested that the Division of Aging allow the inspection results to be available through the Missouri state government's web site. The Committee recommends requiring long-term care facilities to post in a common area of the facility a notice that information concerning the results of previous inspections of the facility may be obtained by contacting the Division of Aging. The Committee also encourages the Division of Aging to review and improve its procedures for informing the public of appropriate information concerning long-term care. In addition, the Committee recommends requiring the Division of Aging caseworkers to inform its clients receiving home care services that information concerning state monitoring of home care agencies may be obtained through the Division of Aging.

Recommendation 10: Better Information on Access to Care Providers

The Committee heard testimony from family members concerning their frustration in finding appropriate care for their elderly family members. The Committee also heard testimony from advocates who explained that the elderly who were most at risk were those individuals who had overly stressed care givers and those who were isolated with limited access to a care giver. The Committee finds that improving the elderly's access to a variety of care givers would

decrease the risk of abuse and neglect. The Committee recommends that the Division of Aging develop and disseminate a publication that lists by region of the state a variety of care givers providing services to the elderly.

Recommendation 11: Additional Training for Nurse Assistants and Home Care Staff

Several nurse assistants employed by long-term care facilities testified before the Committee. These witnesses explained to the Committee the tasks they performed in providing care for elderly residents during a typical day. The Committee recognizes the immense responsibility these staff members manage each day and finds that care of elderly residents would be enhanced if certified nurse assistants had additional training concerning abuse and neglect. The Committee recommends additional training requirements on elder abuse and neglect for certified nurse assistants.

The Committee also heard from several witnesses who testified about the unique opportunities home care staff have to prevent elder abuse and neglect. Frequently, these care givers may have the most frequent and consistent contact with an elderly person. Some witnesses explained that home care staff would be better able to detect abuse and neglect with additional training. The Committee also recommends requiring additional training on abuse and neglect for home care staff who serve the elderly.

Recommendation 12: Authorize Incremental Sanctions for Hospital and Home Health

Licensing

Currently, the Department of Health may deny or revoke the license of a hospital or home

health agency because of deficiencies. Each is an extreme remedy appropriate only when several requirements and procedures occur. When the hospital or home health agency has deficiencies not warranting a license revocation, the Department suggests that intermediate sanctions may be helpful in promoting compliance with requirements. The Committee finds that incremental sanctions would facilitate the Department's ability to address concerns relating to elder abuse and neglect within hospitals and home health agencies, and the Committee recommends encouraging the industry and the Department to cooperate in developing incremental sanctions.

Recommendation 13: Encourage Development of Ombudsman Programs

The Committee heard testimony from several witnesses who had served as ombudsmen or had experience with ombudsmen in long-term care facilities. Many witnesses stated that the ombudsmen were helpful in improving care for their family members, but that some facilities did not have the program. Some witnesses explained that the ombudsmen were able to take the time to learn of residents' concerns and, frequently, were easier to talk to about issues than some of the staff. Consequently, these individuals are in an ideal position to help identify and prevent elder abuse and neglect. The Committee recommends encouraging the Division of Aging and the Area Agencies on Aging to expand and promote the ombudsman programs in long-term care facilities and with home care providers.

Recommendation 14: Additional Funding for Direct Care Staff

Testimony from direct care workers, administrators of long-term care facilities, family members, and advocates evidenced a need for additional funding for wages of direct care staff

within care facilities and home care agencies. Employees and family members stated that the care of residents and clients suffered because of a shortage of staff. Some witnesses explained that quality of care was adversely affected by high rates of staff turnover. Witnesses from the long-term and home care industry stated that it was difficult to hire and retain qualified direct care staff. These witnesses believed that increasing the wages of direct care staff would allow them to employ and retain more staff, but that they could not increase wages without receiving an increase in Medicaid reimbursement. The Committee finds that a shortage of qualified direct care staff as well as high rates of staff turnover contribute to an increased risk of elderly abuse and neglect. The Committee recommends additional appropriations for funding higher wages for direct care staff in long-term care facilities and home care agencies.

The Committee also finds that the Division of Aging and the Department of Health could better facilitate appropriate staffing levels with expanded authority to direct specific corrective actions related to staffing. The Committee recommends expanding the authority of the Division of Aging and the Department of Health when confronted with staffing violations, regardless of whether the violation is corrected, to direct corrective actions related to staffing including establishing staffing ratios, training plans, or plans for staff supervision.

Recommendation 15: Unannounced Inspections of Hospitals

The Committee heard testimony from a variety of individuals concerned about the prevalence of abuse and neglect among elderly Missourians. The Committee notes that many witnesses expressed frustration with the effectiveness of state inspections when facilities were aware that the inspections were about to occur. While the Committee acknowledges that most of

the witnesses' comments were directed at long-term care facilities, the Committee recognizes that the effectiveness of inspections of any health care facility is greatly reduced if the facility is notified of the time and date of the inspection. The Committee received testimony that hospital inspections are scheduled in advance except in rare circumstances. The Committee finds that the Department of Health's ability to identify elderly abuse and neglect in hospitals is greatly impeded by its limited authority to conduct unannounced inspections. The Committee recommends legislation authorizing the Department of Health to conduct, on a routine basis, unannounced inspections of hospitals.

Recommendation 16: Increase Public Awareness of Elderly Abuse and Neglect

The Committee heard testimony from witnesses who described situations in which abuse or neglect of elderly persons was identified later than it should have been. Several witnesses also expressed concern about the number of elderly abuse and neglect victims who are not identified. The Committee finds that increased public awareness would serve to identify and prevent elderly abuse and neglect. The Committee recommends expanding the elder abuse and neglect awareness program established through SS/SCS/HCS/HB 316, 660 & 203 (1999) by targeting all mandatory reporters and also, for example, home care workers, postal workers, and other individuals who frequently have the opportunity to visit elderly at their homes.

Recommendation 17: Pilot Project for Telephone Check-In System

Several witnesses described accounts of home care personnel failing to visit the client or failing to spend adequate time with the client. The Committee heard testimony from an owner of

a home care company that uses a telephone check-in system for its home care staff. Staff phone the system when they arrive and depart from a client's residence. The system verifies the time and that the staff member is phoning from the client's residence. The Committee recommends legislation establishing one pilot project using this type of check-in system for home care personnel in one area of the state.

Recommendation 18: Encourage Respite Care and Adult Day Care

Family members and other witnesses expressed frustration with trying to find respite care and adult day care for the elderly. Some witnesses testified that the elderly are at higher risk for abuse and neglect when their care givers are stressed and frustrated. To address this need, the Committee recommends that the Division of Aging pursue changes in reimbursement, licensing, and other measures to encourage respite and adult day care programs.

Recommendation 19: Increase Asset Limits for Medicaid Eligibility

The Committee received testimony that, among the fifty states and the District of Columbia, Missouri and Texas have established the lowest cash resource limit for an individual's Medicaid eligibility. That resource limit is currently \$1,000 with Iowa having the highest limit at \$10,000. The Committee recommends increasing the asset limits for Medicaid eligibility so that more elderly individuals may obtain assistance with a variety of services.

Recommendation 20: Review Elder Abuse Penalties

Some members of the law enforcement community expressed concern that the penalties

for elder abuse may not be adequate to effectively deter abusers. The Committee recommends that the Division of Aging solicit comments from the law enforcement community concerning the need for enhancing penalties for the abuse and neglect statutes. The Committee also invites prosecutors and members of the law enforcement community to recommend to its members any specific statutory modifications.

Recommendation 21: Better Access to Records of the Elderly

The Committee received testimony that it is currently difficult for the Department of Social Services to obtain the medical records of an elderly individual who is incapacitated or deceased. This is problematic when the Department pursues an investigation or proceeding relating to the care and protection of such an eligible adult. The Committee finds that the Department's ability to protect the elderly against abuse and neglect would be enhanced with better access to medical records. The Committee recommends authorizing the Department to have access to any medical and mental health records of an eligible adult under Chapter 660, RSMo, in any action brought by the Department relating to the care and protection of that adult.

Recommendation 22: Reviewing the Limit on Medicaid Home Care Services

Several witnesses testified that many elderly individuals would benefit from receiving more services within their homes and communities. In many instances, home care services would allow elderly individuals to remain closer to family and familiar surroundings. The Committee recommends that the Department of Social Services review its waivers and regulations to consider the appropriateness of increasing the limit on Medicaid home care services from its current level

of 60% of nursing home costs.

STEVE GAW
573 • 751-2749



STATE CAPITOL
JEFFERSON CITY, MISSOURI

MISSOURI HOUSE OF REPRESENTATIVES

August 27, 1999

The Honorable Craig Hosmer
House Post Office
State Capitol Building
Jefferson City, MO 65101

Dear Craig:

Please be advised that, as of this date, I am appointing you as Co-Chair of the Interim Committee on Elderly Abuse and Neglect.

Members of this committee include:

Rep. Craig Hosmer - Co-Chair
Rep. Lana Stokan - Co-Chair
Rep. Phillip Britt
Rep. Ryan McKenna
Rep. Harold Selby

Rep. Rex Barnett
Rep. Connie Cierpiot
Rep. Larry Crawford
Rep. Michael Gibbons

The charge of this Interim Committee is to study Missouri law on reporting, investigation and prosecution of elderly abuse and neglect cases to determine whether statutory changes are needed and, if so, to make recommendations for legislation for next session.

The Interim Committee may solicit input and information from any individual, group, or entity that it deems necessary to fulfill its duties.

The staff of House Research and Legislative Research shall provide such legal, research, clerical, technical and drafting services as the Interim Committee may require in the performance of its duties. In addition, the actual and necessary expenses of the Interim Committee members and legislative staff shall be paid from the contingent fund.

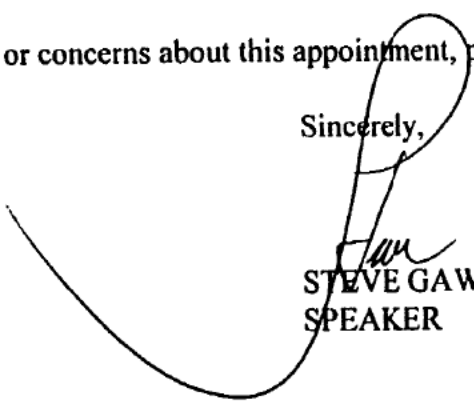
August 27, 1999

Page Two

On or before December 15, 1999, the Interim Committee shall deliver to my office a detailed written report.

If you have questions or concerns about this appointment, please do not hesitate to contact me.

Sincerely,



STEVE GAW
SPEAKER

RSG:lsr

c: Ms. Anne Walker

Testified – Jefferson City – September 16th

Andrea Routh, Director
Division of Aging - Department of social Services
Jefferson City, MO

Lois Kollmeyer, Director
Division of Health Standards and Licensure – Department of Health
Jefferson City, MO

James Klahr
Office of the Attorney General
Jefferson City, MO

TESTIFIED · KIRK WOOD ·

OCTOBER 4TH

Carroll Rodriguez
Alzheimer's Association
St. Louis, MO

Bill Rutledge
Progressive Home Health
Union, MO

Suzanne Lagomarcino
Older Women's League
St. Louis, MO

Ernie Edelmann
Fortress Outreach
Florissant, MO

Dr. William Suancarek
Christian Hospital - Northeast
Florissant,

Violette King
Nursing Home Monitors
Godfrey, IL

Bonnie Thorpe
St. Peters, MO

Sgt. Maria Gomez
St. L County Police - Family Crime Unit
Clayton, MO

Darlene Biggins
Home and Community - Division of
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St. Louis, MO

Chris Wiltse
Division of Aging
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Minnie Brown
Service Workers Local 50
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Katie Broyles
AARP
St. Louis, MO

Carrie Costantin
St. Louis County Prosecutor
Clayton, Mo

Dorothy Erickson
LTC Ombudsman Program
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Mary Ann Fieser
Festus, MO

Gloria Friar
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Cindy Hardin
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MO Health Care Association
Jefferson City, MO

Mary Schantz
MO Alliance for Home Care
Jefferson City, MO

Dr. Jeff Kerr
Rolla, MO

Verna Lee Hayes
MO Coalition for Quality Care
Springfield, MO

Alice Pollock
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Violet MacPhail
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Ewing Gourley
Mo Health Care Association
Springfield, MO

Kathy Iman
KJI Enterprises
Nixa, MO

Charles Ritter
Springfield Police Department
Springfield, MO

Cpt. Carl Schwartz
Springfield Police Department, Senior
Crimes Team
Springfield, MO

DeForest Cline
Silver Haired Legislature
Springfield, MO

Janet Clayton
MO Coalition for Quality Care
Neosho, MO

Keith Hardin
Governor's Advisory Council on Aging
Richmond, MO

Howard Higgins
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Letic Lee
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Kay Hegler
Rolla, MO

Greg Laiben, MD
MO Patient Care Review Foundation
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James Klahr
Office of the Attorney General
Jefferson City, MO

Lois Rickman
Florissant, MO

Betsy Stevens
MO League of Nursing Home
Administrators
Warsaw, MO

Rose Gripka
Pierce City,

TELEPHONY PROPOSAL 'INTEGRA'

PROBLEM/NEED

1. Fraud within and abuse of current reimbursement system.
2. Uncertainties of high need clients being seen.

PRIMARY GOAL

1. Nearly eliminate the opportunity for fraud and abuse by caregivers.
2. Establish near real time management of caregivers.

STRATEGY IMPLEMENTATION

Implement full automation of the client care encounter through the use of telephony. Caregivers are required to clock in and out of the client's home, as well as thoroughly document specific services delivered. We know within an hour to an hour and a half if client service started as planned and if authorized service was delivered.

OUTCOMES

1. This technology is disclosed during the application process. Several would-be abusers of the system have been self-eliminated prior to being hired.
2. Caregivers follow schedules with much greater regularity than ever before.
3. Every client and employee service dispute as it relates to time and date of service and rather or not the service occurred is easily resolved.
4. The state is receiving bills for actual service time delivered.
5. We are able to ensure aides have shown up for scheduled visits and immediately begin working on replacements if they have not shown.

RECOMMENDATIONS

1. Establish an incentive for companies willing to implement this technology. Incorporate the incentive into the Division Of Aging annual provider contract.
2. Or, as in the of New York City mandate that all providers implement telephony. With the mandate attach an appropriate rate increase to offset the cost.